

[applicant]." In making a comparison under this issue CFEF is clearly superior.

33. CFEF's eight objectives are clearly "outwardly" directed, either because they serve to further a community need or seek to use the station to further the educational program of a local educational institution (Fdgs. ¶ 16). In its proposals to provide an internship opportunity to identified local educational institutions, to broadcast news and other programs produced by the students of local educational institutions, and its proposal to broadcast instructional programming in conjunction with local educational institutions (Fdgs. ¶ 17), CFEF deserves credit for proposing to "bring to the metropolitan community the resources of the university." New York University, supra, 19 F.C.C.2d at 368. See, also, Seattle Public Schools, supra, 69 R.R.2d at 1644. CFEF's objectives, moreover, particularly with respect to the broadcast of family programming, and the provision of internship opportunities for local students, are logical outgrowths of programs with which CFEF's principals are currently involved (Fdgs. ¶ 25). See, New York University, supra, 17 R.R.2d at 116. CFEF's objectives are also based on ascertained community needs, particularly, objectives three, four, five, six and eight (Fdgs. ¶ 19-23).

34. By way of contrast, Hispanic's sole articulated objective is a general one, to provide an Hispanic broadcast service, but it has neither proposed specific programs or specific institutions (with the exception of a vague reference concerning "access" for Lake Mary Community College, Fdgs. ¶ 11), through which it will

work. Nor does Hispanic have any articulated plans or proposals to ensure that its objective will be integrated into station operation, which is particularly glaring in view of the fact that all Hispanic's directors have long standing business and personal ties to Puerto Rico. Two of CFEF's directors will work at its station full-time, and, although the Commission has stated that "... our standard comparative criteria ... are virtually meaningless," New York University, 10 R.R.2d 215, 217 (1967), clearly the fact that two of its principals will work at the station is some assurance that the objectives set by the corporation will be faithfully implemented in station operation. Hispanic offers no specific plan for station operation at all, other than to say that two of its directors have broadcast experience and one is an educator. CFEF proposes objectives which are outwardly directed, are based on the needs of the community, in some instances are logical outgrowths of existing programs, and will be implemented by two of its three directors who will work at the station full time. CFEF warrants a solid preference under this issue. See, New York University, supra, 17 R.R.2d at 116.

35. Other factors which the Commission may wish to consider in evaluating the applicants include: the fact that CFEF's proposal are more detailed, solid, capable of effectuation and likely to be implemented when compared to Hispanic's; the fact that CFEF's proposal is superior in serving the needs of the community; the good past broadcast record of CFEF's principals in operating a radio station in the same radio market as its proposed new station; and, finally, CFEF's auxiliary power proposal.

36. CFEF's proposals are more certain, clear, capable of implementation and likely to be implemented when compared with the proposals of Hispanic. CFEF has proposed a complete and specific program schedule prepared on the basis of an extensive ascertainment of the service area's needs, Hispanic proposes no program schedule at all (Fdgs. ¶¶ 19, 21-24, 11). CFEF's programs and proposals are based, in some instances, on existing programs (Fdgs. ¶¶ 23, 26), Hispanic's are not. CFEF's proposal includes two of its principals who will work at its station full time (Fdgs. ¶ 25), Hispanic has no plans for station operation (Fdgs. ¶ 14). CFEF's principals who will work at the station have experience in owning and operating noncommercial stations (Fdgs. ¶ 26), Hispanic's principals do not (Fdgs. ¶ 14). CFEF's principals who will work at the station have a combined total of 29 years broadcast experience in the station's radio market, the broadcast experience of Hispanic's principals is confined to the island of Puerto Rico (Fdgs. ¶ 26, 14). CFEF's principals have experience as principals of an educational institution in the Orlando area, propose to work with schools with whom they have a legal connection, like CCS, and will initiate internship programs and programs with schools with whom they have worked in the past, like RTS and Stetson (Fdgs. ¶ 25). Hispanic has no discernible local ties, and no specific proposal to implement. Accordingly, CFEF should also receive a preference for the fact that its proposals are more detailed, well-conceived and capable of quick effectuation than those of Hispanic. "In terms of initiation of service and the likely development of proposed programming ...," CFEF's plan is

more certain and therefore superior to the plans of Hispanic. East Tennessee Public Communications Corporation, FCC 87D-2 (Initial Decision, ¶ 30, released Feb. 3, 1987).

37. CFEF should also receive credit because its program proposal more clearly is responsive to the ascertained needs of the community, the standard by which any noncommercial station's service is judged. See, Seattle Public Schools, supra, 65 R.R.2d at 1635. CFEF's principals have conducted extensive surveys of the problems, needs and interests of the service area, including personal interviews with community leaders as well as community members (Fdgs. ¶ 24), and proposed specific programming, including public affairs programming responsive to those needs, such as family problems and the need for Union Park to have a outlet for local expression (Fdgs. ¶¶ 19, 22, 25). Hispanic has proposed no programs at all, much less programs responsive to community needs, even though it did conduct a telephone survey which identified a number of community problems. Both CFEF's surveys and Hispanic's telephone survey identified a number of community needs (Fdgs. ¶¶ 21-23, 13) but the only need which Hispanic's program proposal has even addressed is the purported need for Hispanic Programming. Even with respect to the one need upon which CFEF and Hispanic are agreed, however, the need for Spanish-language programming, CFEF's proposal is clearly superior. CFEF's proposal would serve more Hispanics than that of Hispanic, and CFEF's proposal is also detailed and specific, even to the names and qualifications of the persons who will be hosting the programming (Fdgs. ¶ 21). Moreover, CFEF's Spanish-language programming is responsive to the

ascertained needs of the Hispanic community (Fdgs. ¶¶ 21-22). CFEF should receive a preference for its more responsive proposal.

38. CFEF is not aware of any case in which the proposed principals of a noncommercial station (as opposed to a renewal applicant) received credit for their good past broadcast record. Commercial applicants have, of course, been receiving such credit in comparative cases for an "unusually good" or an "unusually bad" record since the Policy Statement on Comparative Broadcast Hearings, 1 F.C.C.2d 393, 5 R.R.2d 1901 (1965). However, since the Commission has repeatedly held that an applicant's past record is the best predictor of future performance, see, e.g., Knoxville Broadcasting Corp., 103 F.C.C.2d 669, 59 R.R.2d 1617, 1639 (Rev. Bd. 1986), the record of CFEF's principals who will be working at the station should be considered here, and CFEF should receive credit for the superb past broadcast experience of Messrs. Hoge and Moffit at WTLN. WTLN's outstanding record includes more than 15 hours per week of public affairs programming (Fdgs. ¶ 27), as well as extensive efforts to ascertain the community's problems, needs and interests through community leader interviews, monitoring the called in concerns of persons participating in the station's call-in public affairs programming and other local media (Fdgs. ¶ 23). WTLN programming regularly responds to the ascertained needs with programs such as "Central Florida Forum," and programs specifically included in the program schedule to deal with community needs, such as programs responsive to family problems and issues such as "Life Perspectives" and "Focus on the Family" (Fdgs. ¶ 22). WTLN's response to community needs has caused it to produce innovative and

daring programming as well, such as its weekly program "Eleuthros," which discusses the problems and traumas created by child sexual abuse, and other intra-family abuse (Fdgs. ¶ 27). This program, both in format and subject matter, is unique in the Orlando radio market and was created to deal with the problems of child sexual abuse mentioned in repeated community leader interviews (Id.). WTLN organized a seminar of local high school students after the Ted Bundy execution to discuss sexual abuse, a seminar which was taped and broadcast several times on the station (Fdgs. ¶ 28). It is a demonstrated "sensitivity to the area's changing needs through flexibility of programming designed to meet those needs ... [which] takes a past record out of the bounds of average performance." WHDH, Inc., 16 F.C.C.2d 1, 15 R.R.2d 411, 425 (1969). WTLN also has an outstanding record of community outreach. In addition to the seminar on sexual abuse following Mr. Bundy's execution, other community outreach projects have included organizing seminars for local residents on community mental health and financial management to help residents cope with the recession, and a skills clinic with a local professional baseball team to bring teens and their dads to a clinic where they heard baseball players discussing teen problems such as alcohol and drug abuse, and AIDS (Id.). WTLN was a main sponsor of the recently concluded "Food Drive for the Hungry" which was the most successful private food drive in the nation, and for five years has organized and sponsored "Family Expo," a service fair in which agencies, ministries, institutions and others who serve the needs of the family gather to distribute information about their services (Fdgs. ¶ 27). WTLN does live remote

broadcasts on a regular basis at local ministries and social service agencies, such as the Crisis Pregnancy Center, to give publicity to the agencies and the services they offer (Fdgs. ¶ 28). A record of community outreach and involvement has been recognized as a factor in a good past broadcast record. United Broadcasting, Inc., 100 F.C.C.2d 1574, 57 R.R.2d 885, 891 (1985). WTLN's record is exemplary, and shows that the station has been dynamic in its involvement in the community, closely attuned to community needs and showing special sensitivity and flexibility in meeting those needs, such as in its organization of a seminar on sexual abuse which was broadcast following the execution of Ted Bundy (Fdgs. ¶ 28). WTLN also showed creativity in responding to those needs, for example, in organizing a baseball clinic during which teenagers and their fathers heard professional ball players discussing teen problems (Id.). Given this record of proven performance by two of its principals, CFEF warrants a strong preference for this superior past broadcast record.

39. Finally, CFEF warrants a slight preference for its proposal to install emergency power equipment at both its transmitter and its studio. Real Life Educational Foundation of Baton Rouge, Inc., 6 FCC Rcd 2577, 69 R.R.2d 420, 424 (Rev. Bd. 1991).

#### VIII. ULTIMATE CONCLUSION


40. As argued above, CFEF warrants a substantial preference for proposing second noncommercial service to almost 46,000 more persons than Hispanic, thereby best serving the Commission's 307(b) priorities. Because the other comparative issue is contingent, and

because of the importance the Commission traditionally places on service to little served areas, this preference is dispositive. However, CFEF also warrants a strong preference for its more sure, certain and solid plans for integrating its objectives into station operation and, under other comparative factors, a preference for the fact that its proposals are more certain and likely of effectuation, a preference for the fact that its proposals are more responsive to the needs of the community, a preference for the unusually good past broadcast record of its principals, and, a slight preference for its auxiliary power proposal.

**WHEREFORE**, the foregoing premises considered, Central Florida Educational Foundation, Inc. respectfully requests that its construction permit application be granted and the applications of: Hispanic Broadcast System, Inc.; Bible Broadcasting Network, Inc.; Southwest Florida Community Radio, Inc.; and, Mims Community Radio, Inc. be denied.

Respectfully submitted,

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August 10, 1992



CERTIFICATE OF SERVICE

I, Glinda M. Corbin, a secretary in the law offices of May & Dunne, Chartered, hereby certify that I have caused to be sent this 10th day of August 1992, via first class U.S. mail, postage prepaid, a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW to the following:

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